REMARKS

The Examiner has imposed a Restriction Requirement and requested that Applicant elects one of two indentified groups of claims for prosecution in connection with the present application. The groups of claims are as follows:

Group I, including claims 1-5, drawn to a semiconductor device; and

Group II, including claims 6-13, drawn to a process of making a semiconductor device.

The Examiner further required election of one of the following species:
Species I, Figs. 1(a)-1(c); or

Species II, Figs. 2(a) -2(c).

In response to the Examiner's restriction/election requirement, Applicant elects, with traverse, to prosecute Group I, including claims 1-5 and Species II, Figs. 2(a)-2(c). Applicant specifically reserves the right to file a divisional application directed to non elected claims 6-13.

With respect to Applicant's traversal, in restricting the claims, the Examiner improperly applies MPEP §806.05 (f) by requiring restriction on the grounds that the two groups of claims are distinct because the semiconductor device of group I can be made by another materially different process of group II, impurity ion diffusion instead of impurity ion implantation."

However, the present application is a national stage of a PCT application submitted under 35 U.S.C. §371 and therefore Unity of Invention rules apply and not

restriction practice under MPEP §806. Although the Examiner acknowledges that PCT Rule 13.1 applies, the Examiner improperly applies the standard under MPEP §806. Thus, the Restriction Requirement is improper on its face and should be withdrawn.

Moreover, the Examiner may issue a restriction type requirement only if no unity of invention exists. However, the Examiner must state why there is no "single general inventive concept" (see MPEP §1893.03(d)). As the Examiner merely makes the conclusory statement that "these species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1" the Examiner has failed to demonstrate that there is no unity of invention. Thus, the Restriction Requirement is improper on its face and should be withdrawn.

Additionally, according to the rules of Unity of Invention, an international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to one of the following combinations of categories:

1- a product and a process specially adapted for the manufacture of the product; or

2- a product and process for use of the product; or

3- a product, a process specially adapted for the manufacture of the product and the use of the product; or

4- a process and an apparatus or means specially designed for carrying out the process; or

5- a product, a process specially adapted for the manufacture of

the product, and an apparatus or means specifically designed for carrying out the process.

As the alleged groups of claims relate to at least one of the aforementioned categories, specifically defined as having unity of invention, the restriction of the claims is incorrect and should be withdrawn (see 37 C.F.R. §1.475(b)).

For all of the above stated reasons, reconsideration and withdrawal of the outstanding restriction/election requirement and favorable allowance of all claims in the instant application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, PLC

By _____

John W. Fitzpatrick, Reg. No. 41,018
P.O. Box 8910
Reston, VA 20195
(703) 668-8000

DJD/JWF/hcw